

DEBORAH S. REAMES, State Bar No. 117257  
dreames@earthjustice.org

GEORGE M. TORGUN, State Bar No. 222085  
gtorgun@earthjustice.org

Earthjustice  
426 17th Street, 5th Floor  
Oakland, CA 94612  
Telephone: (415) 217-2025  
Facsimile: (415) 217-2049

Attorneys for Plaintiffs

BRENDAN R. CUMMINGS, State Bar. No. 193952  
P.O. Box 549

Joshua Tree, CA 92252  
Telephone: (760) 366-2232  
Facsimile: (760) 366-2669

Attorney for Plaintiff Center for Biological Diversity

IGNACIA S. MORENO, Assistant Attorney General

SETH M. BARSKY, Chief  
DANIEL J. POLLAK, Trial Attorney

U.S. Department of Justice  
Environment and Natural Resources Division  
Wildlife and Marine Resources Section  
Ben Franklin Station, P.O. Box 7369  
Washington, D.C. 20044-7369  
(202) 305-0201 (tel)  
(202) 305-0275 (fax)

Attorneys for Federal Defendants

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

CENTER FOR BIOLOGICAL DIVERSITY, )  
SIERRA FOREST LEGACY, ENVIRONMENTAL )  
PROTECTION INFORMATION CENTER, and )  
KLAMATH-SISKIYOU WILDLANDS CENTER, )

Plaintiffs,

v.

KEN SALAZAR, in his official capacity as  
Secretary of the Interior, DANIEL ASHE,<sup>1</sup> in his

Case No: C 10-01501 JCS

**STIPULATED SETTLEMENT  
AGREEMENT ON ATTORNEYS' FEES  
AND COSTS**

<sup>1</sup> Plaintiffs named Rowan Gould, in his official capacity as Acting Director of the Service, as a Defendant in this case. On June 30, 2011, Daniel Ashe was confirmed as the Service's Director.

1 official capacity as Director of the United States )  
 2 Fish and Wildlife Service, and UNITED STATES )  
 3 FISH & WILDLIFE SERVICE, an agency of the )  
 4 United States Department of the Interior, )  
 5 Defendants. )

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6 This Stipulated Settlement Agreement (“Agreement”) is entered into by Plaintiffs, Center for  
 7 Biological Diversity, Sierra Forest Legacy, Environmental Protection Information Center, and  
 8 Klamath-Siskiyou Wildlands Center (collectively “Plaintiffs”), and Defendants, the United States  
 9 Fish and Wildlife Service (“the Service”), Daniel M. Ashe, Director of the United States Fish and  
 10 Wildlife Service, and Ken Salazar, Secretary of the United States Department of the Interior  
 11 (collectively “Defendants”).

12 WHEREAS Plaintiffs filed their Complaint for Declaratory and Injunctive Relief in the  
 13 above-captioned case on April 8, 2010. Doc No. 1;

14 WHEREAS Plaintiffs asserted challenges under the Endangered Species Act (“ESA”) and  
 15 Administrative Procedure Act to findings by the Service that listing the west coast population of the  
 16 fisher (“fisher”) as an endangered species under the ESA was “warranted but precluded” by other  
 17 pending listing proposals, and that expeditious progress was being made on those pending proposals.  
 18 *See* 16 U.S.C. § 1533(b)(3)(B)(iii);

19 WHEREAS this action was dismissed with prejudice on October 6, 2011, pursuant to the  
 20 Parties’ Stipulation of Dismissal and Order. Doc. No. 49. In the Stipulation of Dismissal and Order,  
 21 the Plaintiffs and Defendants agreed that, notwithstanding dismissal of this action, the Court retained  
 22 jurisdiction to consider any stipulation or motion concerning an award of costs and attorneys’ fees  
 23 pursuant to section 11(g)(4) of the ESA, 16 U.S.C. § 1540(g)(4). Doc. 49 at 2;

24 WHEREAS Defendants and Plaintiffs have now resolved Plaintiffs’ claims for attorneys’  
 25 fees and costs in this case;

26  
 27  
 28 Director Ashe therefore is substituted for Mr. Gould pursuant to Federal Rule of Civil Procedure  
 25(d).

1 DEFENDANTS AND PLAINTIFFS ACCORDINGLY STIPULATE AND AGREE AS  
2 FOLLOWS:

3 1. Defendants agree to settle all of Plaintiffs' claims for costs and attorneys' fees in the  
4 above-captioned litigation for a total of forty-eight thousand dollars (\$48,000.00) in full and  
5 complete satisfaction of any and all claims, demands, rights, and causes of action, pursuant to  
6 Section 11(g) of the ESA, 16 U.S.C. § 1540(g), the Equal Access to Justice Act ("EAJA"), 28 U.S.C.  
7 § 2412(d), or any other statute and/or common law theory, for attorneys' fees and costs incurred by  
8 Plaintiffs through and including the date of this Agreement in connection with the claims in the  
9 above-captioned action. A check will be made payable in that amount to Earthjustice c/o Elizabeth  
10 Ottinger and transmitted to Earthjustice, California Regional Office, 426 17th Street, 5th Floor,  
11 Oakland, CA 94612-2820.  
12

13 2. Defendants agree to submit all necessary paperwork for the processing of the attorneys'  
14 fee award to the Department of the Treasury's Judgment Fund Office, pursuant to 16 U.S.C. §  
15 1540(g)(4), within ten (10) business days of receipt of the court order approving this Agreement.  
16 Plaintiffs agree to provide all necessary information for the processing of the attorneys' fee award to  
17 Defendants in a timely fashion.  
18

19 3. Plaintiffs agree to accept payment of \$48,000 in full satisfaction of any and all claims for  
20 attorneys' fees and costs of litigation to which Plaintiffs are entitled in the above-captioned  
21 litigation, up to and including the date of this Agreement. Plaintiffs agree that receipt of this payment  
22 from Defendants shall operate as a release of Plaintiffs' claims for attorneys' fees and costs in this  
23 matter, through and including the date of this Agreement.  
24

25 4. By this agreement, Defendants do not waive any right to contest fees claimed by  
26 Plaintiffs or Plaintiffs' counsel, including the hourly rate, in any future litigation.  
27  
28

1           5.       Nothing in this Agreement shall be interpreted as, or shall constitute, a requirement  
2 that the Federal Defendants are obligated to pay any funds exceeding those available, or take any  
3 action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other appropriations  
4 law.

5  
6           6.       The parties agree that this Agreement was negotiated in good faith and constitutes a  
7 settlement of claims that were disputed by the parties. By entering into this Agreement no party  
8 waives any claim or defense, except as expressly stated herein.

9           7.       This Agreement does not represent an admission by any party to any fact, claim, or  
10 defense in any issue in this lawsuit. This Agreement has no precedential value and shall not be used  
11 as evidence of such in any litigation except litigation to enforce the terms of this Agreement.

12  
13           8.       The undersigned representatives of each party certify that they are fully authorized by  
14 the party or parties they represent to agree to the Court's entry of the terms and conditions of this  
15 Stipulation and do hereby agree to the terms herein.

16           9.       This terms of this Agreement shall become effective upon entry of an order by the  
17 Court approving this Agreement.

18  
19           10.      The Court shall retain jurisdiction to enforce and oversee compliance with the terms  
20 and conditions of this Agreement and Court Order. *See Kokkonen v. Guardian Life Ins. Co. of*  
21 *America*, 511 U.S. 375 (1994).

22           Respectfully submitted this 6th day of February, 2012.

23  
24  
25                               /s/ George M. Torgun (with permission)  
26                               DEBORAH S. REAMES  
27                               GEORGE M. TORGUN  
28                               Earthjustice  
                                  426 17th Street, 5th Floor  
                                  Oakland, CA 94612  
                                  Tel.: (415) 217-2000

Fax: (415) 217-2049  
dreames@earthjustice.org  
gtorgun@earthjustice.org

Attorneys for Plaintiffs

BRENDAN R. CUMMINGS, State Bar. No. 193952  
P.O. Box 549  
Joshua Tree, CA 92252  
Telephone: (760) 366-2232  
Facsimile: (760) 366-2669

Attorney for Plaintiff Center for Biological Diversity

IGNACIA S. MORENO,  
Assistant Attorney General  
SETH M. BARSKY, Chief

/s/ Daniel Pollak  
DANIEL POLLAK (Cal. Bar # 264285)  
Trial Attorney  
U.S. Department of Justice  
Environment & Natural Resources Division  
Wildlife & Marine Resources Section  
Ben Franklin Station  
P.O. Box 7369  
Washington, DC 20044-7369  
Phone: (202) 305-0201  
Fax: (202) 305-0275  
Email: daniel.pollak@usdoj.gov

Attorneys for Federal Defendants

**[PROPOSED] ORDER**

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: Feb. 7, 2012

THE HONORABLE  
UNITED STATES DISTRICT JUDGE

